

## Executive Summary

**T**he death of 16-year-old John Pat in a Roebourne police lock-up in September 1983 became the catalyst for the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). When the comprehensive four-year inquiry concluded in 1991, it made a total of 339 recommendations, many of which related to the design of police lock-ups and treatment of detainees.

Since the RCIADIC, annual reporting of deaths in custody by the Australian Institute of Criminology has shown there to be in general a low rate of Aboriginal deaths in custody although this is as much a product of a proportional increase in the Aboriginal prison population over time as a sign of any great improvement. The overall trend for Aboriginal deaths in police custody (as distinct from prison custody) over the past 20 years has been stable and deaths in lock-ups have declined gradually but markedly in this time period. What the data cannot do however is reveal the level of amenity and treatment afforded to people in custody. While custodial arrangements in prisons are subject to an inspection regime, the same level of scrutiny does not currently exist for police lock-ups and incidents of mistreatment will not usually come to light unless a complaint is made and investigated.

The perceived gap in the oversight of police lock-ups was a significant factor prompting the Community Development and Justice Standing Committee (“the Committee”) to establish its inquiry into custodial arrangements in police lock-ups in June 2013. The 30<sup>th</sup> anniversary of the death of John Pat in September 2013 also made it an opportune time to examine whether current arrangements fully comply with the RCIADIC recommendations and also the Optional Protocol to the Convention Against Torture (OPCAT). The latter is the international agreement adopted by the United Nations in 2009 to assist states in ensuring that torture or other acts of cruel, inhuman or degrading treatment or punishment do not occur in places of detention. Australia signed the OPCAT in May 2009 but has not yet ratified the agreement.

**Chapter 1** of this report expands on the process and rationale for the Committee’s Inquiry. The circumstances of John Pat’s death in 1983 are explained, highlighting why the RCIADIC had to happen. An overview is presented of deaths in custody data over time and while figures are generally encouraging, it is not possible to draw definite conclusions about lock-up amenity or detainee welfare without closer analysis.

**Chapter 2** reviews RCIADIC implementation and monitoring. The first response report was released in March 1992 by a joint ministerial forum comprising Commonwealth, State and Territory ministers. The first annual report followed in 1994 charting the implementation of Commonwealth Government responses, and individual states and territories subsequently tabled similar implementation reports in their respective

parliaments. The Aboriginal and Torres Strait Islander Commission (ATSIC) was initially tasked with monitoring the Commonwealth's implementation of RCIADIC recommendations but came under criticism in a Federal parliamentary review in 1994. Many Aboriginal communities complained that reports and progress updates were not being received and that ATSIC merely compiled responses for annual implementation reports without independent critical analysis. By 1996 Australian governments claimed to have implemented the majority of the recommendations however this was difficult to gauge given that ATSIC could only report on Commonwealth activities and most recommendations related to State and Territory government departments and agencies. At the time, State and Territory reports were also found wanting because they were hastily compiled and lacking in independence.

The history of implementation and monitoring in WA has been equally sporadic. Implementation reports were prepared almost annually by the Aboriginal Affairs Department between 1992 and 1997. Reports addressing implementation were also released at various times by the Aboriginal Justice Council, Aboriginal Legal Service of WA and the Deaths in Custody Watch Committee (WA), a common theme being the lack of complete implementation of RCIADIC recommendations despite government assertions to the contrary. The most recent implementation report covering all WA government departments and agencies occurred in June 2001. The report, prepared by the Aboriginal Affairs Department, found that the vast majority of recommendations had been implemented or implementation was ongoing.

**Chapter 3** examines detainee access to medical and legal services and other third parties. While WA Police policies emphasise duty of care and establish procedures for screening, regular cell checks and when to seek a medical opinion, the Committee found that lock-up personnel often lack clinical expertise and/or ready access to medical professionals. This can hamper the screening of detainees for medical issues and the timely provision of medical assistance. Similarly, detainee access to essential medications is prescribed within WA Police policies but difficulties associated with checking that medications are appropriate and as prescribed often frustrate this process in practice.

A significant subset of comments received by the Committee pertained to mental health. Definite scope was identified for improving practices in lock-ups to ensure more timely and appropriate access by detainees to medical services, including mental health services although the extent to which this can be achieved will depend on a commitment to provide the necessary resources. While the ideal solution to all these issues would be for lock-ups to have access to 24/7 professional medical services including mental health care, limited resources preclude this option. The Committee has recommended that WA Police provides 24/7 medical coverage at the primary metropolitan lock-up (Perth Watchhouse), and improves arrangements for on-call medical assistance (including mental health) at all lock-ups. Further, that the State

Government implements mechanisms for diverting people with mental health problems/illness from arrest and transfer to lock-ups.

A detainee's right to access legal services is stated in the *Criminal Investigation Act 2006* and WA Police policies detail procedures in this regard. Procedures are also in place for WA Police to notify Aboriginal Legal Services in relation to the detention of an Aboriginal person as per RCIADIC recommendations. Nonetheless, the Committee found that detainee access to legal services does not always occur in a timely way. Poor lock-up design was also found to be a contributing factor due to a lack of suitable and confidential meeting spaces.

More concerning was that although the *Criminal Investigation Act 2006* requires an arrested person to be informed of, and afforded the right to legal access, there is no requirement for this to occur with any immediacy following arrest and the Committee heard anecdotal evidence to suggest there can be lengthy delays. Legislative amendment would ensure that detainees (and Aboriginal detainees in particular) receive prompt access to legal services. The Committee has therefore recommended that the *Criminal Investigation Act 2006* be amended to ensure that detainees receive timely access to legal services and evidence is rendered inadmissible in court proceedings where it can be demonstrated that a detainee's right to legal access has been deliberately suspended. Aboriginal detainees in particular would benefit from legislative provisions requiring immediate notification of legal services, however this would need to be supported by State Government contribution to the Aboriginal Legal Service of WA.

The Committee has also recommended that WA Police should adopt a consistent policy regarding detainee access to family members and/or other third party supports (with a view to maximising access) and engage with local Aboriginal communities in order to better exploit informal networks of support.

The issue of detainee access to family members is particularly pertinent in relation to juveniles where the Committee heard concerning evidence that young detainees may have been denied access to family members in some instances and/or family members may not have been notified of a young person's detention or interview by the police. It is critical that WA Police adhere to the procedures in the *Young Offenders Act 1994* pertaining to notification of a responsible adult and the Committee has recommended that evidence be made inadmissible in court proceedings where this is obtained from a juvenile when a responsible adult is not present.

Another key theme concerned access to interpreters, since interviews with Aboriginal people are often compromised by language difficulties. Despite provisions in legislation and WA Police policies for interpreter services to be sought where required, evidence suggests that Aboriginal detainees have limited access to interpreters in lock-ups. The

Committee found however that this is part of a much broader issue around awareness and availability of Aboriginal interpreter services and has recommended that the State Government expedite the development of a national Indigenous interpreter framework through its participation in the Council of Australian Governments.

In **Chapter 4** lock-up design, staffing and administration are examined. Western Australia has approximately 125 lock-ups with an average age of 45 years. Through evidence received and direct observation the Committee found that the physical condition of police lock-ups varies. Some are old, dirty and unfit for use while many others are functional but poorly designed. The WA Police Custodial Design Guidelines developed in the wake of the RCIADIC outline the essential features of a safe cell; however the Committee found that many lock-ups in WA do not comply with the guidelines or with RCIADIC recommendations, lacking vital items such as alarms and resuscitation equipment.

The Committee also found that recorded CCTV footage from the inside of lock-up cells can offer valuable protection to both detainees and police officers; however across lock-ups the ability to record (in particular) is very limited. It is important that the ability to record CCTV footage from inside cells is made a requirement for all lock-ups and WA Police should upgrade all CCTV systems in lock-ups and formulate rules governing the access and retention of recordings.

Other design issues highlighted in the chapter include the lack of suitable facilities for detainees to meet with lawyers or visitors prompting the Committee to recommend that WA Police should prioritise the provision of suitable spaces for confidential consultations in all lock-ups. The absence of compliant holding rooms in any lock-up in the State suggests that the *Criminal Investigation Act 2006* should also be amended to better reflect current facilities and police preferences for holding arrested subjects.

Overall, it is clear that ageing infrastructure associated with many of WA's lock-ups is having a bearing on the conditions experienced by detainees and on the ability of police to provide a decent standard of care. Bearing in mind the high cost of fully upgrading all lock-ups, the Committee has recommended that interim measures should be implemented to ensure that at least minimum standards of safety and comfort are being met.

There are currently no official police directives around minimum staffing requirements for custodial care and single officer custodial care duties are common, particularly in regional areas. This carries potential risks for officers and compromises detainee care and has prompted the Committee to recommend that WA Police ensure a minimum of two officers are rostered for custodial care duties at any time. While the Committee received a mixture of views regarding the merits of outsourcing custodial services, WA Police are still considered best-placed to provide custodial care in lock-ups. Other

improvements to WA Police staffing recommended by the Committee include greater emphasis on employing Aboriginal community officers in areas with a high Aboriginal population, and abolishing the maximum tenure period of four years in locations where staff continuity would assist in building trust with the Aboriginal community.

The administration of lock-ups is complex with responsibility shared to varying degrees by WA Police, Serco, the Department of Corrective Services, and the Department of the Attorney General. The Committee heard numerous concerns regarding the Court Security and Custodial Services contract with respect to less than ideal custodial care and transport arrangements. The Committee has therefore recommended that at the next opportunity for contract review, attention is given to various matters including the collection of detainees from locations other than hubs, provision of custodial care by Serco in the context of detainees and their court appearances, and collection of detainees early in the 24 hour lock-up clearance period.

Other administration matters such as documentation processes, supervision and standard procedures are also examined in Chapter 4. The Committee found that standardised procedures are not always adhered to although this may be the result of inadequate supervision, imprecise wording and/or inappropriate lock-up facilities. The use of video links is also briefly examined in the context of alternatives to transporting detainees over long distances. While the use of video links for court appearances is becoming more common, regional areas often lack appropriate AV facilities. The opposite is true of the new Perth Watchhouse which has sufficient AV facilities to allow magistrates to process arrests from across the metropolitan region and some regional areas – however it cannot currently operate beyond Saturday mornings. While severe contractual limitations regarding court security currently restrict the court's operation, processes are in train to rectify this.

**Chapter 5** examines the adequacy of oversight mechanisms and disciplinary measures for personnel tasked with custodial processes. Western Australia currently lacks a comprehensive system of oversight for police lock-ups. Currently the Office of the Inspector for Custodial Services (OICS) has a narrow scope for overseeing prescribed lock-ups, which excludes lock-ups operated by the WA Police. The Department of Corrective Services has a broader remit to annually inspect police lock-ups used to detain prisoners, however inspections are limited to a single-page tick-box assessment to determine suitability of the lock-up. NGOs like the Deaths in Custody Watch Committee (WA) also play an important role in ensuring the adequacy of custodial processes, but can only really complement the more formal agency-based mechanisms.

As it stands, the jurisdiction and scope of lock-up inspections by agencies is poorly defined which only increases the risk that issues will not be detected or promptly addressed. The Committee heard significant support for the OICS to assume independent oversight of police lock-ups and considered such a remit appropriate as it

would be consistent with existing OICS functions and would provide independent oversight of systemic issues. The Committee has recommended amendment of the *Custodial Services Act 2003* to enable OICS to assume oversight responsibility for all police lock-ups in Western Australia. It will be important however for the OICS to be appropriately resourced so it may carry out this expanded role.

The chapter also presents an overview of existing disciplinary measures for personnel involved in custodial processes. This includes the Code of Conduct applicable to all WA Police personnel which requires any unprofessional conduct to be reported to bodies including but not limited to the Police Internal Affairs Unit or the Corruption and Crime Commission (CCC). Independent avenues of complaint for individuals aggrieved with treatment received during detention include the Ombudsman or CCC although the avenues by which members of the public can complain about minor matters are not generally known.

The WA Police and/or the CCC will investigate allegations of misconduct with responsibility generally determined on the basis of seriousness of the allegation. Resource limitations necessarily restrict the number of investigations that can be conducted by the CCC so in the majority of instances matters are referred back to the WA Police for investigation. However, the CCC has the power to monitor the agency's progress and review how appropriately it has dealt with misconduct. In determining when to conduct investigations, the CCC will usually reserve this power for more serious allegations and/or to further particular strategic purposes, particularly as its own investigations are broader in scope and take in organisational failings as well as the conduct of individuals. That said, it is unclear exactly what criteria the CCC uses to select the cases it chooses to investigate. Currently the CCC has a strategic focus on police lock-ups as it has identified scope to deliver greater objectivity and rigour in this regard.

The Committee considers disciplinary measures for personnel involved in custodial processes to be adequate although greater public reporting of police internal investigations through the WA Police Annual Report and/or periodic reporting in Parliament by the Minister for Police (subject to *sub judice* rules) is needed to foster greater public confidence. The Committee considers that current investigative processes between the WA Police and CCC should be retained and reinforced through additional oversight by the OICS to address systemic causes of misconduct.

**Chapter 6** explores cultural awareness and looks at the cultural training currently available for custodial officers. Despite the Committee hearing about some positive experiences, it is disappointing that issues around victimisation, over-policing, systemic racism and a general lack of cultural understanding continued to emerge from submissions, hearings and meetings with Aboriginal community members.

Overall it demonstrates a clear need to enhance cultural competency, made all the more acute by the grossly inadequate Aboriginal cultural competency training currently offered to police recruits. Currently police recruits receive approximately 11 hours of cultural diversity training as part of their 26-week Police Academy training. Of this approximately two hours is instruction on Aboriginal culture. Ongoing training and standardised cultural induction programs for sworn officers are also severely lacking. While WA Police offers staff induction programs whenever officers transfer to new locations, these vary widely in terms of cultural content. The Committee has recommended that WA Police expand its diversity training module for recruits in relation to Aboriginal culture and ensure that Aboriginal people are involved in its delivery. Further, WA Police should ensure sworn police officers receive ongoing cultural competency training and that officers transferring to locations with a significant Aboriginal population receive a comprehensive induction program as standard.

In **Chapter 7** implementation of RCIADIC recommendations is evaluated against the inquiry terms of reference. In general this inquiry has demonstrated that the key principles underpinning RCIADIC recommendations relevant to police lock-ups have been embedded into legislation and/or WA Police policies and procedures. While this has seen improvements in custodial arrangements in police lock-ups since the RCIADIC, the inquiry has nonetheless highlighted gaps in translating policy into practice and has identified scope to further improve arrangements and reinforce compliance. Overall, many lock-ups still do not fully comply with RCIADIC recommendations partly because of limited funding.

A number of miscellaneous issues came to the Committee's attention which relate to the RCIADIC but are not otherwise captured in the inquiry's terms of reference. Among these is the issue of training delivered to lock-up personnel around the identification of "at risk" individuals, resuscitation measures and restraint techniques. The Committee has recommended that WA Police reviews training to ensure: a more comprehensive program that meets duty of care requirements; and that opportunities exist for in-service training.

Alternatives to police custody and prison sentences are also explored, a major frustration being the lack of sufficient facilities (such as bail hostels) and/or programs, especially in regional WA. The lack of alternatives contributes to individuals spending time in lock-ups who might otherwise not need to, for example those serving out warrants of commitment. In turn this generates transport and detention costs and undue hardship for the detainee. The RCIADIC recognised the value of non-custodial sentencing options and pre-sentence programs in breaking the cycle of offending, however there is clearly some way to go and much investment needed before these are widely available. The same unfortunately applies to Aboriginal diversion and justice

reinvestment programs as well as youth and welfare services aimed at addressing the underlying issues of Aboriginal disadvantage.

Lastly, given there has not been any regular reporting around RCIADIC compliance for more than a decade, other more regular reporting mechanisms aimed at uncovering flaws in lock-up arrangements and preventing further deaths in custody have assumed greater significance. The Committee heard evidence supporting a central repository of coronial findings/recommendations and has recommended that the State Government maintains a list of coronial recommendations showing implementation status, and that this list is published and tabled annually in Parliament.

The final chapter also examines compliance with the OPCAT which will require state parties to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention. Until the OPCAT is ratified by the Commonwealth Government, jurisdictional legislation is drafted and the exact form of the NPM is known, it is uncertain exactly what implications there will be for police lock-ups in WA. That said the Committee considers that oversight by the OICS will likely facilitate Western Australia's future compliance with the OPCAT as it will help meet the requirements for a NPM under the Protocol.